



Order 2002-3-9

Served: March 11, 2002

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 11th day of March, 2002

45-day notice filed by

AMERICAN EAGLE AIRLINES, INC.

Of intent to suspend service between Chicago O'Hare
International Airport and Baton Rouge, Louisiana, under
49 U.S.C. § 41717(g)

Docket OST-2002-11462 - 6

ORDER ALLOWING SUSPENSION OF SERVICE

Summary

By this order we are allowing American Eagle Airlines, Inc., to suspend its Baton Rouge-O'Hare service, effective April 6, 2002.

Background

Section 41717(g) of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, P.L. 106-181 (AIR-21) imposed a residual service obligation on carriers that had received O'Hare slot exemptions prior to the passage of AIR-21. Generally, a carrier providing service between a small hub or nonhub airport and O'Hare on or before April 5, 2000, as a result of having been granted O'Hare slot exemptions, may not suspend that service unless it first files notice under 49 U.S.C § 41719 and the Department determines that the carrier suffered excessive losses, including substantial losses on operations on that route during the calendar quarters immediately preceding submission of the notice.¹ Section 41719 requires the carrier to provide at least 45-days notice of intent to terminate, but allows for a number of exceptions permitting termination with lesser notice.

¹ Baton Rouge is classified as a small hub by the Department of Transportation's *Airport Activity Statistics of Certificated Route Air Carriers*, since it accounts for at least .05 percent but less than 0.25 percent of all U.S enplanements.

Application

On February 1, 2002, American Eagle Airlines filed a 45-day notice of intent to suspend scheduled service provided by American Eagle between Chicago O'Hare International Airport and Baton Rouge, Louisiana, as of April 6, 2002. The notice was filed pursuant to 49 U.S.C § 41717(g).

American Eagle operates two daily round trips between Chicago O'Hare and Baton Rouge using regional jet aircraft. By Order 99-7-17, issued July 27, 1999, and Order 99-12-26, issued December 27, 1999, the Department granted a total of four slot exemptions to American Eagle to provide nonstop service between O'Hare and Baton Rouge. American Eagle states that one of these flights continues to use one of the slot exemptions granted by those orders. American Eagle states that its remaining O'Hare-Baton Rouge services are outside the slot-controlled hours.²

American Eagle argues that for the year ended November 30, 2001, it experienced a \$1.1 million loss on the O'Hare-Baton Rouge route. American Eagle contends that as a result of the events of September 11, its parent company, AMR Corporation, has also reported unprecedented losses.

American Eagle argues that even with the loss of its nonstop O'Hare service, Baton Rouge will continue to receive substantial service to other large and medium hubs, including Atlanta, Charlotte, Dallas/Ft. Worth, Houston, and Memphis.

Responsive Pleadings

On February 15, the Greater Baton Rouge Airport District (Baton Rouge) filed an answer opposing the American Eagle notice. Baton Rouge requests that the Department require American Eagle to continue to serve the O'Hare-Baton Rouge market, at least until Baton Rouge and the carrier have negotiated new terms of service, or Baton Rouge has found another carrier to serve the O'Hare-Baton Rouge market.

Baton Rouge argues that American Eagle's allegation of poor financial performance in the O'Hare-Baton Rouge market is not valid in light of current improving market conditions and that the O'Hare-Baton Rouge results should be viewed in context. In this regard, Baton Rouge contends that the recent operating results provided by American Eagle show that the market was improving substantially between the first and second quarters of 2001 and that the negative results of the third quarter of 2001 are largely a result of the events of September 11 and do not reflect the true potential of the O'Hare-Baton Rouge market. Baton Rouge argues that since September 11, overall Baton Rouge traffic has been steadily improving, and that while Baton Rouge traffic is still below 2000 levels, January 2002 traffic is down only a modest 15 percent compared to January 2001.

² Section 41715(a)(1) of AIR-21 eliminated the High Density Rule at O'Hare, effective July 1, 2002, and, effective July 1, 2001, Section 41717(a) narrowed the window of slot-controlled hours to between 2:45 p.m. and 8:14 p.m.

Baton Rouge contends that while American Eagle reported poor financial results for O'Hare-Baton Rouge for the second quarter of 2001, the carrier also reported load factors in excess of 60 percent in both directions. Baton Rouge argues that American Eagle's recent operating results in the O'Hare-Baton Rouge market are only a temporary setback and that the pessimistic picture painted by American Eagle is not accurate. Baton Rouge alleges that with only an additional 5.6 passengers per flight, American Eagle's O'Hare-Baton Rouge service would surpass the break-even point of profitability.

In addition, Baton Rouge argues that American Eagle's system operating results for January 2002 indicate that the carrier has been experiencing a significant traffic rebound with January 2002 system increases in traffic of 4.1 percent compared to January 2001 and a load factor increase of 3.8 points for the same period comparison.

Baton Rouge asserts that American Eagle's disappointment in the O'Hare-Baton Rouge market may be due in part to the poor timing of its flights and that to obtain optimal flight times, business passengers are often forced to drive to New Orleans or to use less convenient but better-timed connecting service in lieu of American Eagle's nonstop O'Hare-Baton Rouge flights.

Baton Rouge also contends that American Eagle's operating results will improve in the near future due to the assumption of aviation system security responsibilities by the federal government, thus relieving air carriers of this costly obligation.

Baton Rouge also argues that American Eagle's assertion that even without direct O'Hare-Baton Rouge service Baton Rouge will continue to receive reasonable access to the national air transportation system is not relevant to the issues of this case. Baton Rouge contends that grant of American Eagle's request will deprive Baton Rouge of direct access to one of the world's major connecting hubs, and numerous connecting markets, especially in the North Central United States.

In like manner, Baton Rouge argues that American Eagle's assertion that it operates only one slot exemption within the current window of slot-controlled hours is irrelevant to the issues at stake in this case.

Instead, Baton Rouge argues that the Department should focus on the original rationale for granting O'Hare slot exemptions to American Eagle and should give significant weight to the underlying goals behind its decision to grant O'Hare slot exemptions for nonstop Baton Rouge service as outlined in Order 99-7-17 and Order 99-12-26. Baton Rouge contends that the competitive and service benefits justifying those decisions remain valid.

Baton Rouge requests that in the event that the Department grants American Eagle's request, as a condition for granting the request, the Department should also require that the carrier contact all passengers holding reservations for flights that would be suspended,

inform them of the suspended service and availability of alternate service, and assist them in obtaining this service.

On February 19, American Eagle filed a motion for leave to file a reply to the Baton Rouge answer.³ American Eagle argues that, in a recent order,⁴ the Department permitted Spirit Airlines to terminate service in the Melbourne-La Guardia market despite the opposition of the Melbourne Airport Authority. American Eagle argues that the circumstances of its notice terminating O'Hare-Baton Rouge service are similar to the Melbourne-La Guardia case.

On February 25, Baton Rouge filed a motion for leave to file a response to the American Eagle reply.⁵ Baton Rouge contends that, under the requirements of 49 U.S.C § 41717(g)(2), American Eagle must demonstrate losses for the O'Hare-Baton Rouge service for the most recent quarters prior to submission of the termination notice. Baton Rouge contends that the route financial data provided with American Eagle's notice are through November 30, 2001, and that to comply with the statute, American Eagle should have included route financial results for the month of December 2001. Baton Rouge also requests that the Department require that American Eagle provide route financial results for January 2002 in order to make a fully informed decision. Baton Rouge argues that the Department should also consider the spirit and the intent of section 105(c)(1) of the Air Transportation Safety and System Stabilization Act.⁶ Finally, Baton Rouge argues that American Eagle may be terminating its O'Hare-Baton Rouge service due, in large part, to a provision in the collective bargaining agreement between American Airlines and its pilots union requiring American Eagle's parent company to reduce American Eagle's system operations. Baton Rouge argues that the community should not be penalized as a result of that contractual arrangement.

On February 26, American Eagle filed a motion for leave to file a rejoinder to the Baton Rouge request.⁷ Among other things, American Eagle updated its original notice to include O'Hare-Baton Rouge operating losses for month of December 2001. American Eagle reports a December 2001 O'Hare-Baton Rouge operating loss of \$143,000 with resulting fourth quarter loss of \$376,000, and an annual loss for the year ended December 31, 2001, of \$1,269,800 for the O'Hare-Baton Rouge service. American Eagle also argues that section 105 of the Stabilization Act does not apply to the issues in this case since American Eagle will continue to maintain service at Baton Rouge with multiple flights to Dallas/Ft. Worth.

³ We will grant the motion.

⁴ Order 2002-2-10, issued February 12, 2002.

⁵ We will grant the motion.

⁶ Section 105 of the Air Transportation Safety and System Stabilization Act grants permissive authority to the Secretary to require that, despite the reduction in passenger demand following the September 11 attacks, carriers continue to provide "adequate" service to all communities that had scheduled air service prior to that date.

⁷ We will grant the motion.

Decision

We have decided to grant American Eagle's request to suspend service.

As we have noted in recent orders,⁸ the U.S. air carrier traffic and revenues have dropped sharply as a result of the September 11 events. As indicated in testimony leading up to the Stabilization Act and a study by the General Accounting Office (GAO), many air carriers suffered precipitous losses in traffic and revenue as consequences of the September 11 events.⁹

Even before the events of September 11, American Eagle was reporting significant losses. Our review of American Eagle's system operating results for the year ended December 31, 2001, shows that during this period American Eagle reported operating and net losses in each quarter, and for the year the carrier reported a total operating loss of \$249.5 million and a total net loss of \$255.7 million.¹⁰ American Eagle has also reported losses of \$1.269 million for its O'Hare-Baton Rouge service for the year ended December 31, 2001, and, consistent with recent orders, we find this level of losses to be substantial. In this regard, we would not have required American Eagle to file additional financial information since the data for the year ended November 30, 2001, are close enough to the February 1, 2002, notice date to be considered current and relevant. The more current data simply reinforce the previously reported losses. Even Baton Rouge has not suggested that additional January 2002 data would reverse the reported O'Hare-Baton Rouge losses of the previous 11 months, only that an improving trend would be demonstrated. Finally, we do not find that Baton Rouge has demonstrated that American Eagle is seeking to terminate the O'Hare-Baton Rouge service based on a contractual arrangement between American Airlines and its pilots. Rather, we find that the American Eagle has demonstrated losses for its O'Hare-Baton Rouge service justifying grant of its request to terminate this service.

We agree with Baton Rouge's contention that grant of pre-AIR-21 O'Hare slot exemptions to American Eagle imposed a residual service obligation under section 41717(g) and that American Eagle's current use of O'Hare slot exemptions in providing O'Hare-Baton Rouge service should not be relevant to our decision. Nonetheless, the issue is rapidly becoming moot. Effective July 1, 2002, or in less than four months, AIR-21 will sunset all O'Hare slot controls. Pre-AIR-21 slot exemptions were granted as a method of improving O'Hare access to small and medium-sized communities such as Baton Rouge. With the upcoming lifting of all O'Hare slot controls,

⁸ See Orders 2001-10-6, 2001-10-7, and 2002-2-10.

⁹ General Accounting Office, Memorandum to Congressional Requesters dated October 15, 2001, Subject: Financial Management: Assessment of the Airline Industry's Estimated Losses Arising From the Events of September 11, (GAO-02-133R). The GAO stated at page 2 "...that there is a reasonable basis to assume that the airline industry will incur losses resulting from the terrorist attacks of at least \$5 billion and possibly more through December 31, 2001." Further, "[o]ur high level analysis, [footnote omitted] using various revenue and cost savings assumptions, indicates possible losses in the range of \$6.5 billion to \$10.5 billion."

¹⁰ U.S. Department of Transportation, Uniform System of Accounts and Reports, Schedule P-1.2.

the rationale requiring O'Hare slot exemption service becomes obsolete, and communities such as Baton Rouge no longer need the Department's intervention to secure the competitive and service benefits of improved O'Hare slot access. Rather, Baton Rouge will soon be able to seek O'Hare service at whatever level the market can sustain. Even today, qualified air carriers operating smaller aircraft, comparable to American Eagle's operations, can operate unlimited O'Hare-Baton Rouge service with only minimal certification requirements.¹¹

We also note that Baton Rouge will continue to receive nonstop jet service to Atlanta, Charlotte, Dallas/Ft. Worth, Houston, and Memphis by seven different carriers. While this factor is not determinative in our decision, we are sensitive to the concerns of communities losing air service, and this pattern demonstrates that Baton Rouge will continue to receive substantial service after termination of O'Hare-Baton Rouge service. Under these circumstances, we will grant American Eagle's request, and effective April 6, 2001, permit American Eagle to suspend its nonstop service between Chicago O'Hare International Airport and Baton Rouge.

As a final matter, as we have indicated in past similar circumstances,¹² before American Eagle suspends service, we expect the carrier to contact all passengers holding reservations for flights that will be suspended, to inform them of the suspension and the availability of other service at Baton Rouge, and to assist them in arranging alternate transportation.

This Order is issued under authority delegated in 49 CFR 1.56(a)(f).

ACCORDINGLY,

1. We allow American Eagle Airlines, Inc., to suspend its scheduled air service between Chicago, IL (O'Hare International Airport) and Baton Rouge, Louisiana, effective April 6, 2002;
2. We grant all motions to file late or otherwise unauthorized documents; and

¹¹ By Order 2000-4-14, issued April 14, 2000, and pursuant to AIR-21, the Department granted blanket slot exemption authority to U.S. air carriers seeking to provide service between small hubs and nonhubs and O'Hare with aircraft having fewer than 71 seats.

¹² See, for example, Order 2001-10-6.

3 We will serve copies of this order on the Mayor President and airport manager of Baton Rouge, and American Eagle Airlines.

By:

READ C. VAN de WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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